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of certain funds belonging to the grantor on the motion to dissolve the injunction, and referring the case to the master to take an account showing what part of the expenses claimed by the trustee other than counsel fees should be allowed as a charge against the trust estate, was not a "final decree" from which an appeal would lie, under the rule that a final decree is one which disposes of the whole subject, giving all the relief that is competent, and leaves nothing to be done by the court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 670-680; Dec. Dig. § 100.* 1 Va.-W. Va. Enc. Dig. 437.

For other definitions, see Words and Phrases, vol. 3, pp. 2774-2798; vol. 8, p. 7663.]

2. Trusts (§ 227*)—Trustee—Protection of Trust Estate—Employment of Counsel—Authority.—It being the duty of a trustee to protect the trust estate from waste, invasion, or trespass, and to defend suits against him with respect to the trust subject, he has implied power to employ counsel therefor at the expense of the trust fund.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 324; Dec. Dig. § 227.* 2 Va.-W. Va. Enc. Dig. 167; 13 id. 359.]

3. Trusts (§ 227*)—Trustee—Powers—Employment of Counsel.—Where grantors in a deed of trust filed a bill to enjoin the trustee from making a sale thereunder, to which the beneficiary, who was sui juris, was also a party, the trustee had no interest in the litigation, and could not therefore employ counsel at the expense of the trust to defend the suit.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 324; Dec. Dig. § 227.* 14 Va.-W. Va. Enc. Dig. 137.]

Appeal from Circuit Court, Augusta County.

Suit by A. M. Stull and another to restrain O. B. Harvey and others from the foreclosure of a trust deed. From a decree awarding certain costs and expenses to the trustee, complainants appeal. Reversed and remanded.

John T. Delaney, for the appellants.

Timberlake & Nelson and *O. B. Harvey*, for the appellees.

CARDWELL, J., absent.

CRAWFORD *v.* FLOYD.

Nov. 16, 1911.

[72 S. E. 711.]

1. Taxation (§ 788*)—Tax Deed—Recitals—Effect—Statutes.—Code 1904, § 661, provides that when a tax deed has been recorded the title shall vest in the grantee, subject to defeat only by proof

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

that the taxes or levies for which the land was sold were not properly chargeable thereon, or, if properly chargeable, had been paid, or that notice of the application to purchase had not been duly given, or that payment or redemption was prevented by fraud or concealment of the purchaser. Held, that the Legislature did not intend to make the deed conclusive evidence of a compliance with the essential requirements of a valid tax sale, to wit, the listing, assessment, and levy of the taxes, the owner's liability, the notice of tax sale, and the actual public sale of the land without fraud; but it did intend to make the deed conclusive of the performance of all other steps required by the statute preliminary to the sale, and to the execution of the deed in pursuance thereof.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1557; Dec. Dig. § 788.* 13 Va.-W. Va. Enc. Dig. 146, 171-174.]

2. Taxation (§ 788*)—Tax Deeds—Recitals—Statutes—Legislative Power.—The Legislature has power to make the recitals of a tax deed prima facie evidence of their correctness.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 788.* 13 Va.-W. Va. Enc. Dig. 146.]

3. Taxation (§ 788*)—Tax Deed—Recitals.—Code 1904, § 666, declares that an applicant to purchase land, sold to the commonwealth for taxes and unredeemed, shall pay to the clerk to whom the application is addressed, 10 per cent. of the amount of the proposed purchase price, provided that the deposit, which shall be first for the purchase price and then for costs, shall in no case be less than $1 Section 661 provides that when a tax deed has been recorded the title shall vest in the grantee, subject to defeat only by proof that the taxes or levies for which the real estate was sold were not properly chargeable thereon, or had been paid, or that notice of the application to purchase had not been duly given, or that payment or redemption had been prevented by fraud or concealment of the purchaser. Held that, where a tax deed recited that at the time of the application to purchase the applicant paid to the clerk 10 per cent. of the amount of the proposed purchase price, it was not avoided on the theory that no sufficient deposit was made, because of proof that the full amount necessary to purchase the land was only $7.64; the statute requiring a minimum of $1.

[Ed. Note.—For other cases, see Taxation, Dec. Dig. § 788.* 13 Va.-W. Va. Enc. Dig. 171-174.]

Appeal from Corporation Court of Roanoke City.

Bill by M. L. Floyd against A. S. Crawford, to cancel a tax deed as a cloud on title. From a decree for complainant, defendant appeals. Reversed and rendered.

Hart & Hart, for the appellant.

Fratherston, for the appellee.

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.